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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/843,990	04/27/2001	John R. Wolf	D-42816-02	1833

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EXAMINER

TRAN, LOUIS B

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 05/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/843,990	Applicant(s) WOLF ET AL.	
	Examiner Louis B Tran	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Appeal Brief of 03/08/2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-33 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. In view of the Appeal Brief filed on 03/08/2004, PROSECUTION IS HEREBY REOPENED. The new grounds of rejection is set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 21-23,25-27,29-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admitted Prior Art (AAPA) concerning Nishimoto et al. (5,336,549) in view of in view of Gill et al. (3,919,033).

Applicant admits - -AAPA - - that the method of placing a first product in a flexible bag, placing a second product in a flexible bag, stacking one bag on top of the other,

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and heat-sealing the first bag and second bag—see page 2, lines 5-15 of the specification.

With respect to claim 21, Applicant's Admitted Prior Art meets all of the claimed subject matter including the composition of the bag with the exception of the polyamide intermediate layer having a melting point of less than 160°C.

However, Gill et al. teaches a polyamide comprising of nylon 6.12 among the preferred polyamides (column 4, lines 43-51). This polyamide is taken to meet the limitations of claim 21 since nylon 6.12 is a caprolactam/laurylactam copolyamide and Polyamide #1 in the instant invention is also a caprolactam/laurylactam copolyamide (page 36, lines 1-3). Moreover, Gill et al. teaches a polyamide having a melting point less than 160°C (or about 120°C-145°C as in **claim 31**) achieved through conventional nylon polymerization processing (column 4, lines 43-51) for the purpose of producing a strong bond (as in column 3, lines 1-22).

Therefore, it would have been obvious to one having ordinary skill in the art to practice the process disclosed by AAPA with a known polyamide as illustrated by the prior art to create a strong bond.

With respect to claim 22, Nishimoto et al. teaches the second layer having a thickness from about 10-50% based on the thickness of the film as described in column 3, lines 55-60.

With respect to claim 23, Nishimoto et al. teaches a fifth layer which serves as an O₂ barrier selected from the group consisting of EVOH, PVDC, polyalkylene carbonate, polyamide, and polyethylene naphthalate as in column 3, line 60-column 4, line 10.

With respect to claims 25 and 26, AAPA teaches 2 to 5 bagged products are stacked on top of one another.

With respect to claims 27 and 29, Nishimoto et al. shows the polyamide layer making up at least 40 or 50 weight percent of the third layer is in column 3, line 14.

With respect to claims 30 and 33, the polyester of Nishimoto et al. is taken to meet the limitations since it is a copolyester of polyethylene terephthalate with a minor amount of isophthalic acid and an intrinsic viscosity of .7-.8, it matches the components and intrinsic viscosity of Polyester #1 in the instant invention (page 36, lines 7-11).

With respect to claim 32, Nishimoto et al. discloses the polyolefin in the first layer having a melting point of about 50°C-125°C as in column 3, line 24.

Moreover, it would have been obvious to one having ordinary skill in the art at the time the invention was made to adjust any ranges of melting points, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

3. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over AAPA concerning Nishimoto et al. (5,336,549) in view Bullock et al. (4,550,548

The modified process of AAPA discloses the invention substantially as claimed but does not show the process being carried out in a rotary chamber vacuum machine.

However, Bullock et al. teaches the use of a rotary chamber vacuum machine for the purpose of sealing multi-layer material as seen in Figure 2

Therefore, it would have been obvious to one having ordinary skill in the art to provide a rotary chamber vacuum machine in order to carry out the process in order to adapt to standard manufacturing settings as in column 1, line 11.

4. Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's Admitted Prior Art (AAPA) concerning Nishimoto et al. (5,336,549) in view of in view of Gill et al. (3,919,033) in further view of Oberle et al. (4,469,742).

The modified method of AAPA discloses the invention substantially as claimed but does not specifically show a free shrink from 40-170 percent at 185°F.

However, Oberle et al. teaches film oriented with a shrink capacity of 30-55% at 185°F as in column 5, lines 29-32 (as in claim 28) in order to create a tight and neat package as in column 5, line 50.

Therefore, it would have been obvious to one having ordinary skill in the art to provide a specific range of shrink capacity in order to achieve neat packaging.

With respect to claim 28, although the method of AAPA does not specifically teach the thickness uniformity of the film it would be obvious to one of ordinary skill to use films with high thickness uniformity, in order to maintain a uniformity in physical properties throughout the film.

Conclusion

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6. Applicant's remarks have been fully considered but are deemed moot in view of the new grounds of rejection.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis B Tran whose telephone number is 703-305-0611. The examiner can normally be reached on 8AM-6PM Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on 703-308-2187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

lbt



Stephen F. Gerrity
Primary Examiner



Rinaldi I. Rada
Supervisory Patent Examiner
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